THE HONOURABLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION NO. 12204 OF 1993

Dated:08-06-2006

Between:

M/s. Stapathi Govt. Employees Co-op.Housing Society Ltd. Rep.by its Secretary Sri C. Bayapa Reddy.

..Petitioner

and

1. Government of Andhra Pradesh, rep. by Mandal Revenue Officer,
Golconda, Hyderabad.

2. Revenue Divisional Officer, Hyderabad.

3. The Chairman, A.P. Land Grabbing Court, Hyderabad.
(The Writ Petition against R-3 was dismissed for default on 15.6.2001)

..Respondents.

ORDER:
(Per T.Ch. Surya Rao, J)

The petitioner seeks a writ of certiorari to quash the order passed by the leaned Special Court constituted under the A.P. Land Grabbing (Prohibition) Act, 1982 Hyderabad in L.G.C. No.134 of 1989 dated 26-7-1993 by declaring the same as illegal, arbitrary and against the principles of natural justice.

The petitioner is a Government employees Cooperative Housing Society Limited duly represented by its Secretary. The 1st respondent herein is the State. State filed a Petition in L.G.C.no.134 of 1989 before the Special Court for a declaration that the respondent

therein is a land grabber and the structures raised by it as mentioned in the petition schedule property are illegal and unauthorized and for eviction of the respondents from the land grabbed. The case of the petitioner is simple and is to the effect that the land in question, covered by Survey Nos. 297/3 Part, 299/2, 298 and 297, correlated to new T.S.Nos. 9, 10, 14 and 15 in Ward No.21 Block C & N situated in Gudimalkapur has been classified as government land (burial ground) and that the Government is the absolute owner thereof. A.P. Town Planning Cooperative Housing Society i.e. writ petitioner has illegally grabbed the land in an extent of 3,043 sq. mtrs in the said Government land and kept it vacant on the ground with a mala fide intention to start unauthorised construction and that grabbing the land of the Government is an offence.

That application was resisted by the writ petitioner by filing a detailed counter. It was the case of the petitioner that the Society did not grab any land as alleged and that it entered into a contract of sale under an agreement dated 20.2.1981 with one Khan Mohd. Amir Ali Khan and his sons and daughters to purchase 5 acres of land covered by Sy.No.297/3/1 of Gudimalkapur admeasuring 18 acres 28 guntas and that the land was owned by one Smt. Rahmat Khatoon, wife of Khan Mohd. Amir Ali Khan. It was the further case of the petitioner that the vendors filed an application before the Government for exemption under the provisions of the Urban Land Ceiling Act, 1976 in terms of G.O.Ms. No. 136, dated 28.1.1981 for an extent of 5 acres and that the Society also applied for permission for construction of compound wall on the southern side of the land agreed to be sold to them so as to protect their land from encroachments or from being misused for burial ground and by applying for permission for such construction from the Municipal Corporation of Hyderabad under its

permit No.165/46 of 1987, dated 12.8.1987. On the above pleadings, the Special Court framed the following three issues:

1. Whether the applicant is the owner of the application-schedule property?
2. If so, whether the Respondent is not a land grabber?
3. To what relief?

During the course of enquiry three witnesses were examined on the side of the applicant and Exs.A-1 to A-9 were got marked. The Secretary of the Society was examined as R.W.1 besides examining the Chainman as R.W.2 and got marked Exs.B.1 to B.10. Appreciating the evidence adduced on either side, the learned Special Court allowed the application with costs of Rs. 2,000/-. In the process, the learned Special Court held on issue No.1 that the applicant-Government was the owner of the petition schedule land and on issue No.2 held that the respondent-Society was a land grabber. Assailing the said Order as aforesaid, the instant writ petition has been filed.

Sri Syed Shareef Ahmed, learned counsel appearing for the writ petitioner seeks to contend, firstly that the Special Court has no jurisdiction to adjudicate the dispute in the absence of the legal requirement that there has been an unauthorized and unscrupulous occupation of the Government land, without any lawful entitlement thereto and secondly that the Special Court committed an error or illegality by considering wrongly Ex.A.1 and by ignoring illegally Ex.B.3 and B.6.

The learned Government Pleader for Assignment per contra seeks to sustain the findings of the Special Court.

The 1st contention of the learned counsel for the writ petitioner raises the jurisdictional issue. It has been held by the Larger Bench of this Court in HINDUSTAN AERONAUTICS EMPLOYEES

COOPERATIVE HOUSING SOCIETY LIMITED, HYDERABAD Vs. SPECIL COURT (CONSTITUTED UNDER A.P. LAND GRABBING (PROHIBITION) ACT, 1982), HYDERABAD[1] in paras 40 and 41 thus:

> "40. A reading of the above paragraphs discloses that to invoke the provisions of the Act, it must be shown and established that the person accused of the offence under the Act, has taken unauthorisedly, greedily, snatched forcibly, violently, unscrupulously, any land, whether belonging to Government, local authority, statutory agencies or private individuals, and that such act is without any lawful entitlement and with a view to undertake various objectionable activities referred to in the Act.
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> 41. The predominant factor is that possession through unauthorised and objectionable means has been taken and that there does not exist any lawful entitlement in favour of the person who has taken such possession.
> xxx xxx xxx xxx"

The Larger Bench seeks to place reliance on a judgment of the Apex Court reported in KONDA LAKSHMANA BAPUJI Vs. GOVT. OF A.P. (2002) 3 S.C.C. 258. Subsequent to the said judgment of this Court, there is a judgment of the apex Court in N. SRINIVASA RAO Vs. SPECIAL COURT UNDER A.P. LAND GRABBING (PROHIBITION) ACT[2].

From the above, it is now obvious that Special Court gets jurisdiction, when it is pleaded specifically inter alia in the application that the land belonging to the Applicant has been illegally, unauthorisedly or unscrupulously occupied by the respondent without any lawful entitlement there to and thereby committed an act of land grabbing. In the absence of any such averment made inter alia in the application, the jurisdiction of the Special Court in our considered

view clearly is not attracted and falls within the domain of the civil Court, which is competent to adjudicate complicated questions between the individual and the individual inter se or between the State and its subject. Keeping the above law enunciated by the Larger Bench of this Court and by the apex Court, let us examine the averments inter alia made in the application filed in the instant case. In column 14 and 15 of the application filed in the prescribed proforma, it has been averred thus

"14. Whether there are any houses or structures on the sland to whom they belong, how they were acquired, market value of the land.	The A.P. Town Planning Co-operative Housing Society has authorisedly grabbed Govt. land and kept under their possession.
15. A concise statement of all relevant facts as to the claim and provision under which it is performed.	The respondent has grabbed land and kept under un-authorised possession with a mala fide intention to start illegal construction. (The other facts are separately shown in the concise statement."

In the concise statement annexed to the said application, it has been specifically pleaded thus:

> "The A.P. Town Planning Cooperative Housing Society has illegally grabbed an extent of 3043 sq. metres in the said Government land and kept vacant on ground with a mala fide intention to start unauthorised construction."

From the above excerpted passages of the application, it is obvious that it has been the plea of the State Government that the respondent, Society has unauthorisedly grabbed the Government land and kept the grabbed land under the unauthorised possession with a mala fide intention to start illegal construction. The twin

considerations for conferring the jurisdiction on the Special Court as discussed herein above are obviously that there shall be unauthorized, illegal or unscrupulous occupation of the land and that occupation shall be without the necessary entitlement thereto. In so far as the first mandatory requirement is concerned, the pleading sufficiently answers the same. It is conspicuously absent and silent as regards the second mandatory requirement. The learned Government Pleader seeks to explain that they have specifically pleaded in the application that it was a case of unauthorised occupation by the land grabber, who grabbed the land, which necessarily means that the said occupation was obviously without any entitlement thereto. The pleading shall have to be construed by going through the application in its entirety and harmoniously. Even in the absence of necessary jargon, the intention shall have to be gathered from out of the averments made inter alia in the application in their entirety is the settled law. In our considered view there is every force in the contention of the learned Government Pleader that although it was not specifically averred in the application that there had been an unauthorised occupation by a land grabber, who occupied the land with a mala fide intention to make unauthorised constructions there on, the 2nd mandatory requirement namely that it was without necessary entitlement thereto could well be gathered. On the 1st contention of the learned counsel for the writ petitioner that the Special Court has no jurisdiction, merits no consideration for the above reasons.

Apropos the 2nd contention, the learned Special Court found that the State Government was the owner of the land and the writ petitioner was the land grabber. Apart from the oral evidence on the point adduced on either side, Special Court relied upon Ex.A-1, the main document sought to be relied upon by the State. Ex.A-1 was the

copy of the Town Survey Land Register. The entry made therein shows clearly that the land in question has been recorded as Government land being in the nature of burial ground. Besides Exs.A-1, A-2 and A-9 sketches are sought to be relied on. As regards these two documents, the oral evidence on the point appears to be shaky. Sri Syed Shareef Ahmed, learned counsel for the writ petitioner has taken us through the relevant observations made by the Special Court on the oral evidence of P.Ws.2 and 3. There is no reason for us to brush aside those observations made by the Special Court. However, *de hors* those two documents, Ex.A-1 still could be relied on. In this connection, the contention of the learned counsel for the writ petitioner is that the entries made in the Town Survey Land Register are not conclusive. The learned counsel seeks to place reliance upon a Bench judgment of this Court in STATE OF ANDHRA PRADESH Vs. PRAMEELA MODI[3] in para 62. This Court observed as follows:

> "the entries in TSLR are no doubt relevant. But, they are not conclusive."

There can be no quarrel, with the proposition sought to be canvassed before us. As a matter of that, it is trite that the entries made in the revenue records cannot confer title. However, there can be no gain saying that they are relevant and till it is otherwise shown or disproved they can prima facie be considered by invoking the presumption under section 114(e) of the Evidence Act. Here, in the instant case, Ex.A-1 is no doubt, the trump card on the side of the 1st respondent. To buttress the said document, the State is further relying upon Exs.A-3 to A-7, which are the copies of the pahanies for the years 1954-55 onwards to 1980-81 i.e. nearly for a period of 30 years. In all these documents, the land in question has been shown as burial ground. These entries made in Exs.A-3 to A-7 would in our

considered view strengthen the entry made in Ex.A-1.

Coming to the evidence on the side of the writ petitioner, the main document sought to be relied upon is Ex.B-6. Ex.B-6 is the proceedings of the Special Officer under Urban Land Ceiling Act passed on 30.4.1992 under Section 8(4) and 9 of the Urban Land Ceiling Act. The vendor of the writ petitioner seems to have filed a declaration in respect of the vacant land held by him in accordance with the provisions contained in Urban Land Ceiling Act. In that connection, the competent authority under the Act passed a final order under Section 8(4) of the Urban Land Ceiling Act holding that he was in possession of the excess land. In the declaration filed by the vendor of the writ petitioner, the land in question was clearly shown as the land held by him.

It is no doubt true that the proceedings passed by the competent authority under the Urban Land Ceiling Act are judicial in nature and obviously the State is not a party thereto. This point was sought to be explained by the learned Special Court on the premise that the contention of the declarant that the land in question as shown in the declaration should be excluded for the reason that it was not sought to be conveyed by means of a regular sale deed and agreement of sale cannot be taken into consideration so as to exclude the land from the holding of the declarant. There appears every reason in the conclusion thus reached by the learned Special Court. Even otherwise, when we examine the binding nature of the document qua the State, in as much as, the State is not a party thereto and obviously the Order though judicial in nature having not been passed between the parties inter se, we are of the considered view that the observations made if any in Ex.B.6 cannot bind the State. Even otherwise, the dispute in question in the instant writ petition has not fallen for consideration before the competent

authority under the Urban Land Ceiling Act. Obviously, the land in question has been shown in the declaration filed by the vendor as a writ petitioner and eventually the competent authority while taking that land into consideration and while computing the lands held by the declarant refused to exclude that land on the ground that contract of sale did not culminate in a sale transaction. Therefore, that document cannot have the effect of denuding the State of its title over the land in dispute in our considered view. Like any other document, more so, the judicial Order it has its own efficacy but when the disputed question comes up for consideration qua the said document that cannot outweigh the other relevant evidence on record adduced by the State. Ex.B-3 is the agreement of sale sought to be relied upon by the writ petitioner to drive home the point. Under this agreement, the Society sought to purchase the land in dispute from its vendor. It has been rightly eschewed from consideration by the Special Court for the reason that such document is void in view of the provisions contained in the Urban Land Ceiling Act and for the further reason that the declarant was in possession of the excess land. Even otherwise, Ex.B-3 will not confer any title on the writ petitioner being mere contract of sale more particularly in respect of the land, which was found to be in excess under the Urban Land Ceiling Act. In that view of the matter, in our considered view Ex.B-3 cannot be pressed into service to drive home the point that the initial entry over the land in dispute by the writ petitioner cannot be called as unlawful or without entitlement qua the State. From the evidence available on record more particularly having regard to the Exs.A-1, A-3 to A-7, we are of the considered view that the finding reached by the Special Court that the State was owner of the land in dispute cannot be considered as illegal, erroneous and without any jurisdiction. No illegal omission to consider relevant evidence nor an error in considering any irrelevant evidence, in the process of application of

evidence has been shown to us so as to reach a conclusion that the Order in question suffers from the vice of illegality which in fact gives the jurisdiction under Article 226 of the Constitution of India to this Court.

Barring Exs.B.3 to B.6, the other documents are not relevant to consider on the question of title in between the parties inter se. At any rate, the cumulative effect of the evidence adduced on the side of the writ petitioner cannot have the effect of rebutting the evidentiary value of the entries made in Exs.A-1, A-3 to A-7. When it is obvious that the entries made in Exs.A-1, A-3 to A-7 are relevant though not conclusive and when relevant evidence is available on record, there is nothing shown on either side which can outweigh the relevancy of that evidence or its efficacy, we see no reason as to why Exs.A-1, A-3 to A-7 shall not be relied upon. In the instant case, the Special Court has rightly relied upon the said documents. From the evidence available on record, it is very difficult to reach a conclusion that the findings reached by the Special Court by appreciating the evidence adduced on either side are in any manner erroneous, illegal and without any jurisdiction.

It may be mentioned that this Court is not sitting in an appeal over the judgment of the Special Court. While exercising the extraordinary jurisdiction under Article 226 of the Constitution of India, we are aware of the limitations for exercising such an extraordinary jurisdiction. Unless it is shown before us that the Order in question suffers from the vice of illegality either by considering the illegal evidence or by omitting to consider any relevant evidence, no infirmity whatsoever thus could be seen from the findings arrived by the learned Special Court. Therefore, the facts and circumstances in the instant writ petition do not warrant any interference by this Court.

For the above reasons, the writ petition must fail and is

dismissed. Under the circumstances, no separate order as to costs.

T.CH.SURYA RAO, J

G. CHANDRAIAH, J

08-06-2006

CHV

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[1] 2004(6) A.L.T. 772(L.B)

[2] 2006(3) A.L.D. 10(SC)

[3] 2005(3) A.L.T. 379(D.B)